

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PUNITIVE DAMAGES AWARDS IN CIVIL CASES TO BE APPORTIONED BETWEEN THE MONTANA BOARD OF CRIME CONTROL AND THE PLAINTIFF; AMENDING SECTIONS 27-1-220 AND 27-1-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 3] may be cited as the "Punitive Damages Apportionment Act".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 3] is to prevent a plaintiff from receiving a windfall in an action in which punitive damages are awarded and to apportion part of the punitive damage award to the state.

NEW SECTION. Section 3. Punitive damages -- apportionment of award and costs -- notice. (1) As used in this section, "punitive damages" means vindictive damages, exemplary damages, and any other additional damages awarded to a plaintiff because of aggravating circumstances in order to penalize, punish, or deter a defendant.

(2) When punitive damages are awarded by a judge or jury pursuant to 27-1-220 and 27-1-221, the amount of the punitive damages must be apportioned as follows:

(a) 50%, less costs as provided in subsection (3), must be paid to the clerk of district court. The clerk of district court shall forward any amount collected under this subsection (2)(a) to the state treasurer within 60 days of receipt for deposit in the appropriate account for the use of the board of crime control.

(b) 50%, less costs as provided in subsection (3), must be paid to the party to whom the punitive damages were awarded.

(3) A proportionate part of the costs of litigation, including reasonable attorney fees, must be deducted from the full punitive damages award before apportionment under subsection (2).

(4) Within 5 days after entry of a judgment award of punitive damages to a plaintiff in a court action, the clerk of district court shall notify the attorney general and the state treasurer of the verdict, finding, or order. The notice must contain:

- (a) the names of both parties to the action and the names of the parties' attorneys;
- (b) the case number and location of the court;
- (c) the name of the party against whom the judgment was awarded;
- (d) the amount of the judgment; and
- (e) the date on which the judgment was entered.

(5) Upon issuance of judgment, the state has all rights due a judgment creditor until the judgment is satisfied and stands on equal footing with the plaintiff of the original case in securing a recovery after payment to the plaintiff of damages awarded, other than punitive damages. This subsection may not be construed as making the state a party in interest. The sole right of the state is to the proceeds as provided in this subsection. This subsection does not confer on the state any interest in or right to intervene at any stage of any judicial proceeding under this section.

(6) The jury may not be informed of the apportionment of punitive damages under this section.

Section 4. Section 27-1-220, MCA, is amended to read:

"27-1-220. Punitive damages -- when allowed. (1) Except as otherwise expressly provided by statute, a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of penalizing, punishing, or deterring a defendant and not as compensation to a plaintiff.

(2) (a) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

- (i) contract; or
- (ii) breach of contract.

(b) Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201."

Section 5. Section 27-1-221, MCA, is amended to read:

"27-1-221. Punitive damages -- liability -- proof -- award. (1) Subject to the provisions of 27-1-220, [sections 1 through 3], and this section, reasonable punitive damages may be awarded when the defendant has

1 been found guilty of actual fraud or actual malice.

2 (2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally
3 disregards facts that create a high probability of injury to the plaintiff and:

4 (a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to
5 the plaintiff; or

6 (b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

7 (3) A defendant is guilty of actual fraud if the defendant:

8 (a) makes a representation with knowledge of its falsity; or

9 (b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or
10 otherwise causing injury.

11 (4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant
12 and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2,
13 do not apply to proof of actual fraud under this section.

14 (5) All elements of the claim for punitive damages must be proved by clear and convincing evidence.
15 Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the
16 correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less
17 than beyond a reasonable doubt.

18 (6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury. ~~An~~
19 ~~award of punitive damages must be unanimous as to liability and amount.~~

20 (7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not
21 admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a
22 verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be
23 determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as
24 provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be
25 awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

26 (b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons
27 for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the
28 following matters:

29 (i) the nature and reprehensibility of the defendant's wrongdoing;

30 (ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;
(iv) the profitability of the defendant's wrongdoing, if applicable;
(v) the amount of actual damages awarded by the jury;
(vi) the defendant's net worth;
(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;
(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and
(ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."

NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 27, chapter 1, part 2, and the provisions of Title 27, chapter 1, part 2, apply to [sections 1 through 3].

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 8. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to actions filed after December 31, 2002.

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